REMARKS

This Amendment is submitted in response to the Examiner's Action dated 11 February 2004.

Applicant thoroughly reviewed the prior amendments to Claims 1, 13, 20, 24 and 39 and can not identify any Section 112 objection which has not been met. Please point out if anything needs to be addressed to meet Section 112.

In the interview, Applicant pointed out a number of differences between independent claims (1, 20, 39, 57, 76, 91, 110, 128, 147, 165, 177, and 195) and the cited prior art of *Walker et al.* and *Shkedy*. Applicant will now identify differences between these pending claims and the prior art. Most of these differences were identified in the interview.

Independent Claims 1, 20, and 39 are similar in scope. Claim 1 is directed to a method of selling articles of manufacture. In contrast, Claim 20 is directed to a method of selling articles of manufacture, but this claim requires the utilization of a "trusted intermediary." Claim 39 is similar to Claims 1 and 20 but requires the utilization of a "virtual exchange." In the interview, the Examiner asked about the differences between a trusted intermediary and a virtual exchange and Applicant responded by stating that a virtual exchange is more clearly an internet moderated method, while a trusted intermediary is not so clearly an internet moderated method. Independent Claims 1, 20 and 39 differ from *Walker et al.* and *Shkedy* prior art references on the following bases:

(1) The claims require that multiple articles be sold or offered for sale from multiple manufacturing entities. See element (b) of Claim 1 which has been amended to specifically require that the plurality of articles of

manufacture be from a plurality of manufacturing entities. See also element (d) of Claim 1. See also elements (d) and (e) of Claim 20. Additionally, see element (b) of Claim 39. This feature is not taught or suggested by *Walker et al.* and only arguably taught by *Shkedy.*

(2) Claims 1, 20, and 39 specifically require the identification of milestones from at least one of a manufacturing phase and a distribution phase. Furthermore, these claims require a separate price for each milestone in order to establish a range of prices. This feature is not taught or suggested by either *Walker et al.* or *Shkedy.*

(3) Claims 1, 20, and 39, as amended, specifically require the utilization of conditional offers with a minimum number of articles which must be aggregated before the conditional offer becomes binding upon a manufacturing entity. See element (e) of Claim 1. See element (f) of Claim 20. See element (e) of Claim 39.

(4) Claims 1, 20 and 39, as amended, specifically require that the pricing milestones correspond to a period of availability in which the costs of future supply chain activities or savings related to an avoidance of future supply chain activities are reflected in the offer price. See element (g) of Claim 1. See element (k) of Claim 20. See element (k) of Claim 39.

New Claim 57 is directed to a method of selling articles of manufacture. This claim differs from *Walker et al.* and *Shkedy* in two respects. First, element (c) specifically requires the identification of at least one pricing milestone in each of a manufacturing phase and a distribution phase, which correspond to an increase in commercial risk. Neither *Walker et al.* or *Shkedy* teach the establishment of pricing milestones in each of the manufacturing phase and distribution phase. Second, element (g) requires that each pricing milestone correspond to a period of availability in which the costs of future supply chain activities, or savings related to avoidance of future supply chain

activities are reflected in offer price. The pricing methods suggested by *Walker et al.* and *Shkedy* do not take into account the costs and/or savings of future supply chain activities. Nowhere in *Walker et al.* or *Shkedy* is it suggested that the price of the offer reflect these factors.

Independent Claim 76 differs from *Walker et al.* and *Shkedy* in the combination of obtaining production guarantees, extending conditional offers which are binding only upon the aggregation of a minimum number of orders, all with respect to price milestones in a production lot cycle. Applicant directs the Examiner's attention to elements (e) and (h). Neither *Walker et al.* or *Shkedy* teach a combination of such features.

Independent Claim 91 is directed to a method of selling which differs from *Walker et al.* and *Shkedy* in two significant respects. First, in accordance with elements (d) and (e), through prior arrangements with the manufacturers, a separate price is determined for a plurality of pricing milestones. This establishes a range of different prices for the articles of manufacture. These prices take into account a change in commercial risks, costs or opportunity as pricing milestones are experienced. These changes in price encourage and reward timely commercial commitments and operate to reduce the commercial risk to the manufacturing entities. The electronic communication system is utilized to make conditional offers at the plurality of pricing milestones. The conditional offers specify a minimum number of articles which must be ordered in aggregate before a conditional offer becomes binding upon the manufacturer. The utilization of these plurality of pricing milestones, conditional offers, and aggregated minimums is not taught or suggested by the *Walker et al.* or *Shkedy* prior art references. Second, element (g) requires that the purchasers be qualified in a sufficiently small geographic delivery area in order to make pricing of the articles of

manufacture economically attractive in part through realization of the benefit of economies of scale and freight and/or delivery costs inside the sufficiently small geographic delivery area. This is also not taught or suggested by either *Walker et al.* or *Shkedy* prior art references.

Independent Claim 110 differs from *Walker et al.* and *Shkedy* in the following respects. Element (d) requires that the potential purchasers be qualified in at least one of three respects. The first is that of geographic location (element d1). The second is that of being financially responsible (element d2). The third is that of being organizationally related or geographically related in a sufficiently small geographic delivery area to minimize freight or delivery component of landed costs (element d3). Additionally, this claim differs from the prior art references in that element (g) requires the utilization of conditional offers which specify one price for each of the articles of manufacture and a minimum number which must be ordered before the conditional offer becomes binding. Additionally, this claim differs from the prior art in that the pricing milestones are selected from one of nine specifically identified pricing milestones in element (h). Finally, element (i) requires that the aggregate minimum order number and price for each article establish a range of changing prices which take into account a change in commercial risks, costs, or opportunity as pricing milestones are experienced, providing a changing discounted price to encourage and reward timely commercial commitments, and to reduce the commercial risk for the manufactures. None of these features are taught or suggested by *Walker et al.* or *Shkedy.*

Independent Claim 128 differs from the *Walker et al.* and *Shkedy* prior art references in significant respects. First, this method requires the utilization of conditional offers with a plurality of pricing milestones. The conditional offers

specify a minimum number of articles which must be ordered in aggregate before the conditional offer becomes binding upon the manufacturing entity. Second, element (g) requires that the potential purchasers be qualified in the sufficiently small geographic delivery area in order to make pricing of the articles of manufacture attractive in part through realizing the benefit of economies of scale and freight and/or delivery costs inside the sufficiently small geographic delivery area. Finally, element (c) requires the identification of a plurality of pricing milestones in at least one of five specifically identified supply chain phases.

Independent Claim 147 differs from *Walker et al.* and *Shkedy* prior art references in significant respects. Element (d) requires that the potential purchasers be qualified in at least one of three ways, including location within a sufficiently small geographically delivery area, financial responsibility, and organizational or geographic relationship in order to minimize freight or delivery costs. Element (g) specifically requires the utilization of conditional offers which specify at least one price and a minimum number which must be ordered before the conditional offer becomes binding. Element (h) requires a plurality of pricing milestones in at least one of five specifically identified supply chain milestones.

Independent Claim 165 differs from *Walker et al.* and *Shkedy* prior art references in significant respects. Element (c) specifically requires the identification of a plurality of pricing milestones in at least one of three specifically identified supply chain phases. These three phases include a preproduction stage, a production stage, and a packaging state. Furthermore, element (e) requires the utilization of conditional offers which specify price and a minimum number of article which must be ordered in aggregate before the conditional offers becomes binding upon the manufacturing entity.

Finally, element (g) specifically requires that the purchasers be qualified in a sufficiently small geographic delivery area in order to make pricing of the articles of manufacture economically attractive in part through realizing the economies of scale and freight and/or delivery costs inside the sufficiently small geographic delivery area. These features are not taught or suggested by *Walker et al.* or *Shkedy.*

Independent Claim 177 differs significantly from *Walker et al.* and *Shkedy.* Element (e) specifically requires the utilization of conditional offers which identify a plurality of pricing milestones and a minimum number of articles which must be ordered in aggregate before the commercial offer becomes binding upon the manufacturing entity. Additionally, element (c) requires the identification of a plurality of pricing milestones and at least one of three specifically identified supply chain phases. The supply chain phases include a preproduction stage, a production stage, and a packaging stage. These features are not taught or suggested by conditional offers which specify price and a minimum number of article which must be ordered in aggregate before the conditional offers becomes binding upon the manufacturing entity. Finally, element (g) specifically requires that the purchasers be qualified in a sufficiently small geographic delivery area in order to make pricing of the articles of manufacture economically attractive in part through realizing the economies of scale and freight and/or delivery costs inside the sufficiently small geographic delivery area. These features are not taught or suggested by *Walker et al.* or *Shkedy.*

Independent Claim 195 differs from *Walker et al.* and *Shkedy* in significant respects. Element (g) requires that the manufacturing entities be qualified in a sufficiently small geographic area in order to make pricing of the articles of manufacture economically attractive in part through realization of the benefit

of economies in consolidation, packaging, and container loading inside the sufficiently small geographic area. Element (e) specifically requires the utilization of conditional offers which specify the plurality of pricing milestones and which also specify a minimum number of articles which must be ordered in aggregate before the conditional offer becomes binding upon a manufacturing entity. Element (c) specifically requires the identification of the plurality of pricing milestones in at least one of nine specifically identified supply chain phases. Each of these stages correspond to changes in commercial risk, cost, or opportunity. None of these features are taught or suggested *Walker et al.* or *Shkedy.*

Applicant believes that it has met all of the requirements of the last office action and respectfully requests allowance of the pending claims.

If any additional fees are required, please charge Deposit Account No. 50-1060.

Respectfully submitted,

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